IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2615 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHIVGAR T GOSWAMI

Versus

DIVISIONAL COLLECTOR

Appearance:

1. Special Civil Application No. 2615 of 1992

Mrs. DT Shah for MR NILESH M SHAH for Petitioner No. 1

MR Hardik RAVAL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 12/08/2004

ORAL JUDGEMENT

Heard learned advocate Mrs. Shah for the petitioner and Mr. Hardik Raval for the respondent

Corporation. In this petition, the award made by the labour court, Rajkot in Reference No. 849 of 1987 dated 1st September, 1989 is challenged by the petitioner workman. Under the said award, the labour court has ordered for reinsertion of the name of the petitioner workman in the waiting list of the Conductors at his original number and without back wages for the intervening period. Therefore, the petitioner workman has challenged the said award qua refusal of back wages for the intervening period.

While issuing rule, this court passed order on 21st September, 1993 and ordered to be heard with Special Civil Application No. 3095 of 1990. Special Civil Application No. 3095 of 1990 was filed by the Corporation challenging the very same award against the direction of the labour court to reinsert the name of the workman in the waiting list of conductor. This Court has decided the said petition on 11th October, 1999 and has dismissed the said petition while confirming the said award. Said petition was dismissed by this Court after hearing the advocates for the parties. Therefore, considering this fact, when this Court has examined the legality, validity and propriety of the award in question in presence of the very same advocate for the present workman and when this order is not challenged by the Corporation before the Higher Forum, this order is also binding to the workman-present petitioner. Though this petition was ordered to be heard with said petition namely Special Civil Application NO. 3095 of 1990, some how or the other, this petition was not listed with said SCA No. 3095 of 1990, otherwise, it would have been disposed of on 11th October, 1999 itself.

Therefore, in view of the above, once the award of the labour court has been examined by this court in the aforesaid petition in presence of both the parties and dismissed the petition of the corporation, challenge to the very same award made by the present petitioner workman for denial of back wages cannot be entertained and the principle of res-judicata will certainly apply. Apart from that, once this court has confirmed the award after considering the relevant facts as well as law, then, this court may, generally, not disturb the finding given by the labour court in the petition of the workman. Therefore, according to my opinion, for the reasons recorded by this court in the oral judgment dated 11th October, 1999 in Special Civil Application No. 3095 of 1990, this petition is required to be dismissed. Accordingly, this petition is dismissed. However, it is clarified that if any legal benefit or legal right is

available to the present petitioner workman in view of the said order dated 11th October, 1999, the petitioner will be entitled to agitate for such benefit or right from the corporation. Rule is discharged. There shall be no order as to costs.

(H.K.Rathod,J.)

Vyas